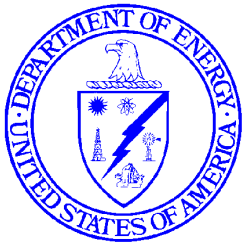


Date: 05/18/12



## Environmental Management Consolidated Business Center (EMCBC)

### Subject: Ratification of Unauthorized Commitments

Procedure

APPROVED: (Signature on File)

EMCBC Director

ISSUED BY: OFFICE OF CONTRACTS

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#### 1.0 PURPOSE

The purpose of this procedure is to identify the process of ratifying unauthorized commitments.

#### 2.0 SCOPE

The scope of this procedure includes any and all unauthorized commitments entered into by EMCBC employees or at a site which the EMCBC has a service agreement.

#### 3.0 APPLICABILITY

This procedure is applicable to all EMCBC and Service Site personnel.

#### 4.0 REQUIREMENTS and REFERENCES

##### 4.1 Requirements:

4.1.1 FAR 1.602-3, Ratification of Unauthorized Commitments

4.1.2 DEAR 901.602-3. Ratification of Unauthorized Commitments

##### 4.2 References:

4.2.1 DOE Acquisition Guide, Chapter 1.1 Acquisition Regulation System

4.2.2 DOE Acquisition Guide, Chapter 70.1, Attachment F – Ratification Actions

4.2.3 Interim Implementation of Amended Head of Contracting Activity (HCA) Delegation/Business Clearance Review Thresholds, E.R. Simpson to Heads of Contracting Activities, dated June 6, 2008

4.2.4 IP-540-15, Review and Approval of Proposed Sales, Procurement, Financial Assistance, and Subcontract Actions

#### 5.0 DEFINITIONS

5.1 Ratification - as used in this procedure means the act of approving an unauthorized commitment by an official who has the authority to do so.

5.2 Unauthorized commitment - as used in this procedure means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. Some examples of unauthorized commitments are as follows:

- Program Office orders supplies/services before a contractual or assistance document is issued
- Program Office directs contractor or grantee to deviate from the contract or grant
- Contracting Officer exceeds warranted authority or purchase cardholder exceeds delegated authority

## 6.0 RESPONSIBILITIES

6.1 The EMCBC Director is responsible for the following:

6.1.1 Reviewing the ratification package, and providing concurrence that a ratification of an unauthorized commitment is necessary.

6.2 The Office of Contracting (OOC) Assistant Director is responsible for the following:

6.2.1 Reviewing the Contracting Officers recommendation, and providing concurrence that a ratification of an unauthorized commitment is necessary.

6.2.2 Inform the Head of Contracting Activity that an unauthorized commitment has taken place, and coordinating ratification, or delegating the coordination activity as necessary.

6.3 The EMCBC Assistant Directors and Serviced Site Program Directors are responsible for the following:

6.3.1 Taking positive action to preclude to the maximum extent possible, the need for ratification actions.

6.3.2 Providing the Contracting Officer all pertinent documents outlined in this procedure regarding unauthorized commitment entered into by his/her employees.

6.3.3 Providing recommendations for corrective actions for unauthorized commitments entered into by his/her employees.

6.4 The Contracting Officer (CO) is responsible for the following:

6.4.1 Advising any person that is performing or has performed work as a result of an unauthorized commitment that the work performed is unauthorized and is performed at the person's own risk.

6.4.2 Informing the OOC Assistant Director that an apparent unauthorized commitment has taken place.

- 6.4.3 Reviewing the unauthorized commitment and determining if the price is fair and reasonable.
- 6.4.4 Determining if funds were available at the time the unauthorized commitment was made.
- 6.4.5 Evaluating all available information regarding the unauthorized commitment, making a determination as to whether the payment should be made, and forwarding this documentation on to the HCA through the OOC Assistant Director and EMCBC Director.
- 6.5 The EMCBC and Serviced Site Personnel are responsible for the following:
  - 6.5.1 Ensuring agreements are not entered into on behalf of the Department without the appropriate authority to do so. Additionally, EMCBC and Serviced Site Personnel are potentially liable for the costs/damages resulting from an unauthorized commitment
  - 6.5.2 Providing the information as outlined in this procedure to support any unauthorized commitment.

## 7.0 GENERAL INFORMATION

- 7.1 Only Contracting Officers have the authority to enter into, administer, or terminate contracts. But for a few rare exceptions, they also have the sole authority to make related determination and findings. Additionally, Purchase Card Holders are authorized to make purchases of services or supplies within their delegated authority. Contracting Officers and Purchase Card Holders may bind the government only to the extent of the authority delegated to them.
- 7.2 The Procurement Executive is authorized to ratify an unauthorized commitment. The ratification authority of the Procurement Executive is delegated to the Head of the Contracting Activity (HCA) for individual unauthorized commitments of \$25,000 or under. The ratification authority of the HCA is non-delegable.
  - 7.2.1 For unauthorized commitments up to \$25,000, the HCA makes a determination to ratify the unauthorized commitment, assures the implementation and monitoring of a corrective action plan, and provides a copy of the approved ratification along with supporting documentation to the Headquarters Office of Contract Management.
  - 7.2.2 For unauthorized commitments which exceed \$25,000, the HCA evaluates and makes a determination as to whether he/she concurs with the ratification of the unauthorized commitment and forwards the ratification package to the Procurement Executive.
  - 7.2.3 For unauthorized commitments which exceed \$25,000, the Procurement Executive makes a determination to ratify the unauthorized commitment and may obtain concurrence from the Senior Program Office. If the unauthorized

commitment is ratified, the Procurement Executive will monitor the implementation of the corrective action plan. An explanation will be provided to the HCA if the decision is made to not ratify the unauthorized commitment.

- 7.2.4 If the unauthorized commitment is not ratified, then the individual who caused the unauthorized commitment may be held responsible for the resulting liability; however, Legal Counsel will be consulted to determine the appropriate course of action.

## 8.0 PROCEDURE

- 8.1 EMCBC and Serviced Site employees shall not instruct, or otherwise notify, any vendor/contractor to deliver supplies and/or to commence performance for services unless such supplies or services have been approved by a Contracting Officer or authorized Purchase Cardholder with proper delegated authority. Employees without proper delegated authority do not have the authority to bind the U.S. Government; nor should anyone other than a Contracting Officer, or authorized Purchase Cardholder, make verbal or written changes to a previously-issued order/contract for supplies or services. Contractual agreements may only be entered into on behalf of the Government by properly appointed Contracting Officers or Purchase Cardholders; employees with delegated procurement authority.

- 8.2 Identification of unauthorized commitment:

- 8.2.1 Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, the Contracting Officer shall advise that person that the work is unauthorized and performance is at the person's own risk.
- 8.2.2 The Government representative who made the unauthorized commitment shall furnish the Contracting Officer all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to the following:
- a statement as to why authorized procurement procedures were not used;
  - why the contractor was selected;
  - a list of other sources considered;
  - a description of work to be performed or products to be furnished;
  - estimated or agreed upon contract price;
  - citation of available appropriations;
  - a statement as to whether the contractor has commenced performance; and
  - a status of work.

This documentation shall be provided to the Contracting Officer through their cognizant EMCBC Assistant Director or Serviced Site Program Director/Project Manager. To preclude recurrence, the Director of the Program Office or comparable official shall include, in the package, recommendations for corrective action. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel provide this information to the contracting officer, along with the name of the employee who made the commitment.

- 8.3 The Contracting Officer shall evaluate this information, make a determination with respect to reasonableness of price, and recommend whether payment should be made. The Contracting Officer shall forward the documentation for OOC review in compliance with local procedure IP-540-15, Review and Approval of Proposed Sales, Procurement, Financial Assistance, and Subcontract Actions, and obtain the OOC Assistant Director's concurrence prior to submittal to the HCA.
- 8.4 If an unauthorized commitment is ratified, the Contracting Officer shall complete the necessary contract actions to authorize the commitment and include the supporting documentation as part of the official contract file.
- 8.5 If an unauthorized commitment is not ratified, the OOC Assistant Director shall consult the EMCBC Office of Legal Services to determine the appropriate course of action, and the Office of Contracting, specifically the assigned Contracting Officer, shall maintain the documentation in a file separate from the contract file for audit purposes.

## 9.0 RECORDS MAINTENANCE

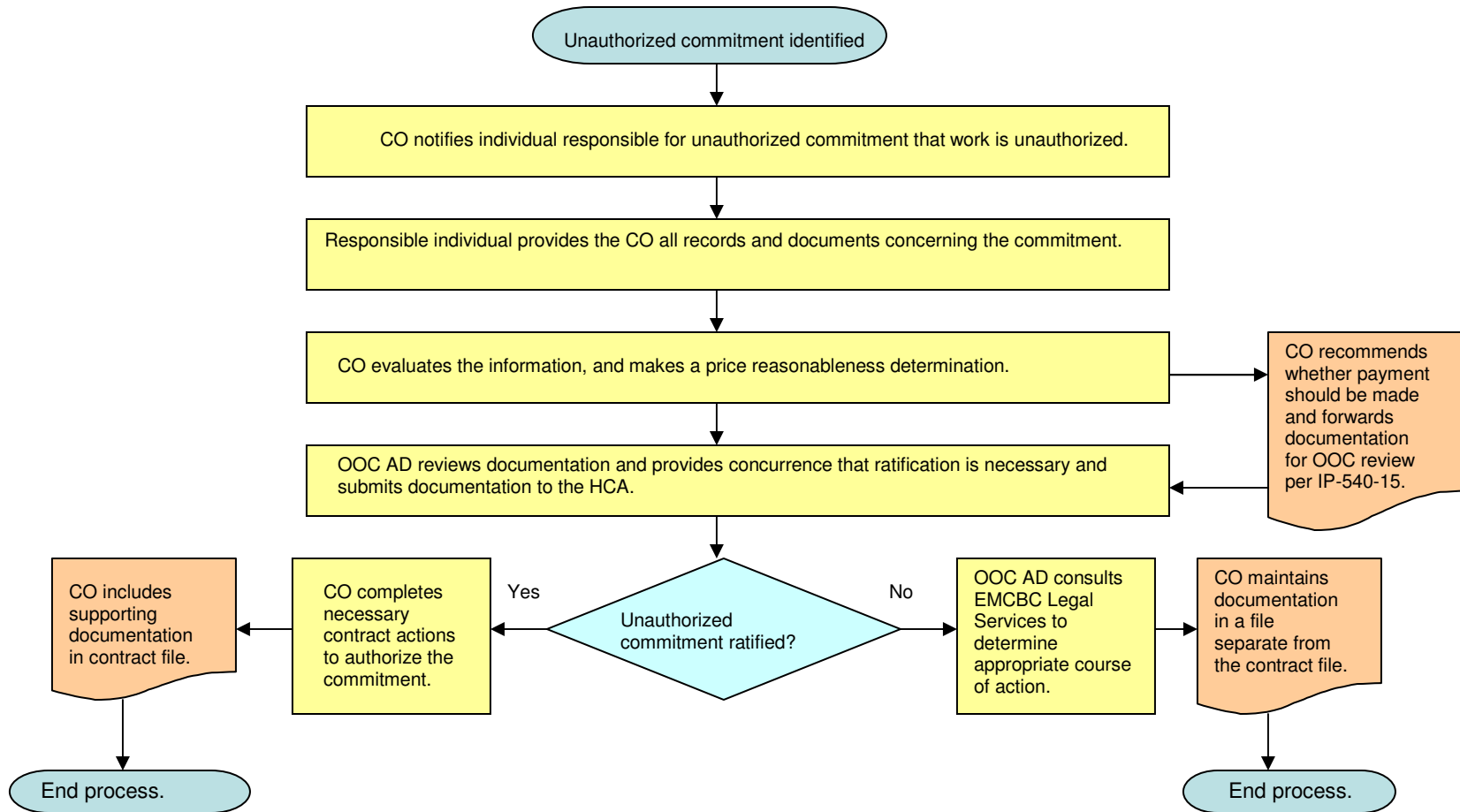
- 9.1 Records that may be generated as a result of implementing this procedure are identified as follows, and are maintained by the Office of Contracting:
  - 9.1.1. If an unauthorized commitment is ratified, the supporting documentation is included as part of the official contract file.
  - 9.1.2 If an unauthorized commitment is not ratified, the documentation is maintained for audit purposes as a separate file by the Office of Contracting.

## 10.0 FORMS USED-Not Applicable

## 11.0 ATTACHMENTS

- 11.1 Attachment A – Ratification of Unauthorized Commitment Process Flow Diagram
- 11.2 Attachment B – EMCBC Record of Revision, IP-251-01-F1, Rev. 2A

## RATIFICATION OF UNAUTHORIZED COMMITMENT PROCESS FLOW DIAGRAM



**EMCBC RECORD OF REVISION****DOCUMENT - Ratification of Unauthorized Commitments**

If there are changes to the controlled document, the revision number increases by one. Indicate changes by one of the following:

- I Placing a vertical black line in the margin adjacent to sentence or paragraph that was revised.
- I Placing the words GENERAL REVISION at the beginning of the text.

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<b>Rev. No.</b>	<b>Description of Changes</b>	<b>Revision on Pages</b>	<b>Date</b>
1	Original Issue	All	07/24/08
	Reviewed for Accuracy, no changes are required at this time.	All	05/18/12